

EXECUTION VERSION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
BOSTON GENERATING, LLC, <u>et al.</u> ,	:	Case No. 10-14419 (SCC)
	:	
Debtors.	:	Jointly Administered
-----	x	
	:	
MARK HOLLIDAY, the Liquidating Trustee of the	:	
BosGen Liquidating Trust,	:	
	:	
Plaintiff,	:	Adversary Proceeding
	:	
-against-	:	No. 12-01879 (SCC)
	:	
K ROAD POWER MANAGEMENT LLC, <u>et al.</u> ,	:	
	:	
Defendants.	:	
-----	x	

**STIPULATION AND CONSENT ORDER PURSUANT TO
FED. R. CIV. P. 41(a) DISMISSING ACTION WITH PREJUDICE
WITH RESPECT TO K ROAD DEFENDANTS**

Defendants Nicholas Donahue, Paul Ehrenzeller, Mark Friedland, Daniel O'Shea, William Kriegel, Scott Silverstein, Barry Sullivan, David Tohir, K Road Power Management, LLC, and WBD K Road Power BG LLC (collectively, the "K Road Defendants"), and Plaintiff Mark Holliday, the successor Liquidating Trustee to Craig R. Jalbert (the "Trustee" and together with the K Road Defendants, the "Parties") of the BosGen Liquidating Trust (the "Trust"), by and through their respective counsel, hereby enter into this Stipulation, Agreement and Order (the "Stipulation") and represent and agree as follows:

RECITALS

WHEREAS, on August 17, 2012 [Docket No. 1], Craig R. Jalbert, as Liquidating Trustee filed the initial complaint in this adversary proceeding (as amended, including pursuant to the First Amended Complaint [Docket Nos. 96 (sealed) and 115 (unsealed)] dated August 1, 2013 and October 1, 2013, respectively, the "Complaint");

WHEREAS, the K Road Defendants deny the allegations in the Complaint and do not admit to liability, fault, or any wrongdoing with respect to any of those allegations;

WHEREAS, K Road Defendants have agreed to enter into this Stipulation to avoid the risks, distraction, and costs of litigation; and

WHEREAS the Trustee has agreed to enter into this Stipulation and dismiss with prejudice all claims against the K Road Defendants upon the terms and conditions stated herein but no claims against any of the other defendants named in the Complaint.

AGREED ORDER

IT IS THEREFORE AGREED AND, UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. Settlement Payment. No later than 10 business days after the date the Court's order approving this Stipulation becomes final and non-appealable, K Road Defendants shall cause to be paid \$9,250,000 (Nine Million Two Hundred Fifty Thousand Dollars) (the "Settlement Payment") into an account designated by the Trustee as a full and final payment in settlement of all claims against the K Road Defendants and the other Released Parties (as defined hereinafter) asserted and that could have been asserted by the Trustee. The Trustee shall provide the K Road Defendants with the following payment information no later than 2 business days after full execution of this Stipulation:

Payee Name:
Payee TIN:
Payee Address:
Payee Contact Name & Phone Number:
Wire Instructions:

2. Release. Upon the Trustee's receipt of the Settlement Payment (the "Payment Date"), the Trustee, for itself, and on behalf of all assignors, the Trust, Boston Generating, LLC, EBG Holdings LLC, and their respective past and present subsidiaries, affiliates, divisions, predecessors, successors, assignors, assignees, on behalf of themselves and each of its and their agents, representatives, officers, directors, managers, and employees, in their capacity as such (each a "Releasor" and collectively, the "Releasors"), for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and having been represented by counsel and having been fully and adequately informed as to the facts, circumstances and consequences of this Stipulation, hereby forever, fully and unconditionally releases and discharges each of the K Road Defendants, including each such K Road Defendant's predecessors in interest, successors in interest, present and former affiliates (including, without limitation, the cancelled affiliates formerly known as K Road BG LLC, K Road BG Holdings LLC, K Road Holdings LLC, K Road Power BG LLC, K Road BG Management LLC, K Road BG MM LLC, K Road Power LLC, and K Road Power, Inc. (collectively, the "Cancelled Entities")), parents, subsidiaries and controlled companies, past and present member firms, and each of the foregoing's respective present and former agents, representatives, officers, directors, managers, employees, in their capacity as such, principals, spouses, heirs, executors, administrators, insurers, subrogees, attorneys, consultants, accountants, partners, and the successors and assigns of each of them (collectively, the "Released Parties") from all manner of actions, causes of action, claims, suits, debts, dues, sums of money, accounts,

reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, matured or unmatured, whether direct or indirect, individual, class, derivative, representative or other capacity, existing or hereafter arising, in law or in equity that have been or could have been or in the future could be or might be asserted, in each case from the beginning of the world through and including the Payment Date (collectively, the "Released Claims"). For the avoidance of doubt, notwithstanding anything else contained in this Stipulation, with respect to the Complaint, nothing herein shall release any claim the Trustee has or may have against any remaining defendant named in the Complaint; this Stipulation addresses the Trustee's claims as to the K Road Defendants only.

3. Covenant Not to Sue. The Trustee, on behalf of itself, its assignors, and the other Releasors, further covenants and agrees not to pursue or prosecute any suit, claim, action, or proceeding seeking recovery against or from any one or more of the Released Parties arising out of or relating to any one or more of the Released Claims.

4. Indemnity. The Trustee agrees to indemnify the Released Parties against all costs, damages, attorneys' fees, liabilities, expenses, and other expenditures incurred as a result of any breach by the Trustee of paragraph 2 or 3.

5. Effect of Settlement; Dismissal With Prejudice. Section 15-108 of New York's General Obligations Law shall apply to the settlement and release contained herein. Within five business days of the Payment Date, the Trustee and the K Road Defendants shall (a) file the notice of dismissal in the form attached hereto as Exhibit 1A which will cause the

Complaint to be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a) with respect to the Released Parties named in the Complaint only and (b) file the notice of dismissal in the form attached hereto as Exhibit 1B which will cause the complaint in the adversary proceeding styled Holliday v. K Road BG LLC, et al. (In re Boston Generating LLC, et al.), Adv. Proc. No. 13-01518 (SCC) (Bankr. S.D.N.Y.), to be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a).

6. No Admissions. The Releasors acknowledge and agree that the matters set forth in this Stipulation constitute the settlement and compromise of all Released Claims and shall not constitute the admission of any fact or liability by any of the Released Parties regarding any claim, including, but not limited to, the claims released hereunder, and neither the terms hereof, nor the fact of this Stipulation itself, shall be evidence of any kind in any proceeding, other than a proceeding to enforce the terms of this Stipulation or any instrument executed in connection herewith or any claim for damages or other relief for breach of any representation or warranty contained herein or in any instrument executed in connection herewith.

7. Cancelled Entities. Nothing in the Stipulation nor any appearance or filing in this proceeding shall be deemed or construed as an admission on the part of the undersigned counsel or the Released Parties that any of the Cancelled Entities remain in existence or are capable of being sued in any proceeding.

8. Costs and Expenses. Each Party shall bear its own costs, attorneys' fees, and expenses in this matter.

9. Severability. If any term, provision, covenant or restriction of this Stipulation is held by a court of competent jurisdiction or other governmental authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions

of this Stipulation shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties shall negotiate in good faith to modify this Stipulation so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

10. Benefit and Burden. This Stipulation shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

11. Governing Law. This Stipulation shall be governed by the laws of the state of New York, without regard to conflicts of law principles that would result in the application of the law of another jurisdiction.

12. Forum Selection. Any dispute between the parties to this Stipulation arising out of or relating in any way to this Stipulation shall be resolved in the United States Bankruptcy Court for the Southern District of New York and each party agrees to submit to the jurisdiction of, and venue in, such court.

13. No Interpretation Against Drafter. The Parties cooperated in the drafting of this Stipulation and the provisions hereof shall not be construed against any Party.

14. Entire Agreement. Each Party agrees that this Stipulation constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous written or oral communications, understandings, and agreements with respect to the subject matter hereof. It is expressly understood and agreed that this Stipulation may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by each Party or the authorized representatives of each of the Parties.

15. Counterparts. This Stipulation may be executed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto were on the same instrument, and such counterparts shall be construed together as one instrument. Facsimile or pdf signatures shall be deemed original signatures.

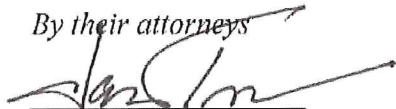


**STIPULATION AND CONSENT ORDER PURSUANT TO FED. R. CIV. P. 41(a)
DISMISSING ACTION WITH PREJUDICE WITH RESPECT TO K ROAD
DEFENDANTS**

January 10, 2014

**NICHOLAS DONAHUE; PAUL
EHRENZELER; MARK FRIEDLAND;
DANIEL O'SHEA; WILLIAM
KRIEGEL; SCOTT SILVERSTEIN;
BARRY SULLIVAN; DAVID TOHIR; K
ROAD POWER MANAGEMENT, LLC
and WBD K ROAD POWER BG LLC**

By their attorneys



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**MARK HOLLIDAY, THE
LIQUIDATING TRUSTEE OF THE
BOSGEN LIQUIDATING TRUST,**

By its attorneys



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_____, 2014

SO ORDERED:

Honorable Shelley C. Chapman
United States Bankruptcy Judge



EXHIBIT 1A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X	
In re:	: Chapter 11
	: :
BOSTON GENERATING, LLC, <u>et al.</u> ,	: Case No. 10-14419 (SCC)
	: :
Debtors.	: Jointly Administered
----- X	
	: :
MARK HOLLIDAY, the Liquidating Trustee of the	: :
BosGen Liquidating Trust,	: :
	: :
Plaintiff,	: Adversary Proceeding
	: :
-against-	: No. 12-01879 (SCC)
	: :
K ROAD POWER MANAGEMENT LLC, <u>et al.</u> ,	: :
	: :
Defendants.	: :
----- X	

**STIPULATION AND CONSENT ORDER PURSUANT TO
FED. R. CIV. P. 41(a) DISMISSING ACTION WITH PREJUDICE
WITH RESPECT TO K ROAD DEFENDANTS**

Mark Holliday, the successor Liquidating Trustee (the "Trustee") of the BosGen Liquidating Trust (the "Trust") together with Nicholas Donahue, Paul Ehrenzeller, Mark Friedland, Daniel O'Shea, William Kriegel, Scott Silverstein, Barry Sullivan, David Tohir, K Road Power Management, LLC, and WBD K Road Power BG LLC (collectively, "K Road Defendants") and, together with the Trustee, the "Parties"), by and through their respective undersigned counsel, hereby enter into this Stipulation and represent and agree as follows:

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the Parties agree that the above-captioned proceeding (and all claims and counterclaims that could have been asserted therein) is dismissed and discontinued with prejudice with respect to the K Road Defendants only and that each party shall bear its own costs and expenses relating thereto.

_____, 2014

**NICHOLAS DONAHUE, PAUL
EHRENZELER; MARK FRIEDLAND;
DANIEL O'SHEA; WILLIAM
KRIEGEL; SCOTT SILVERSTEIN;
BARRY SULLIVAN; DAVID TOHIR; K
ROAD POWER MANAGEMENT, LLC
and WBD K ROAD POWER BG LLC**

By their attorneys

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**MARK HOLLIDAY, THE
LIQUIDATING TRUSTEE OF THE
BOSGEN LIQUIDATING TRUST,**

By its attorneys

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_____, 2014

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS: with respect to the K Road Defendants only, the above-captioned action is dismissed and discontinued without costs and with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

**HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE**

EXHIBIT 1B

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
In re;	:	Chapter 11
	:	
BOSTON GENERATING, LLC, <i>et al.</i> ,	:	Case No. 10-14419 (SCC)
	:	
Debtors.	:	Jointly Administered
-----	X	
	:	
MARK HOLLIDAY, the Liquidating Trustee of the	:	
BosGen Liquidating Trust,	:	
	:	
Plaintiff,	:	Adversary Proceeding
	:	
-against-	:	No. 13-01518 (SCC)
	:	
K ROAD BG LLC, K ROAD BG HOLDINGS	:	
LLC, K ROAD HOLDINGS LLC, K ROAD	:	
POWER BG LLC, K ROAD BG MANAGEMENT	:	
LLC, K ROAD BG MM LLC,	:	
	:	
Defendants.	:	
-----	X	

**STIPULATION AND CONSENT ORDER
PURSUANT TO FED. R. CIV. P. 41(a)
DISMISSING ACTION WITH PREJUDICE**

Mark Holliday, the successor Liquidating Trustee (the "Trustee") of the BosGen Liquidating Trust (the "Trust"), through its undersigned counsel, and counsel with respect to K Road BG LLC, K Road BG Holdings LLC, K Road Holdings LLC, K Road Power BG LLC, K Road BG Management LLC, and K Road BG MM LLC (collectively, the "Cancelled Entities") enter into this Stipulation and represent and agree as follows:

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the above-captioned proceeding (and all claims and counterclaims that could have been asserted therein) is dismissed and discontinued with prejudice, and each party shall bear its own costs and expenses relating thereto.

Nothing in this Stipulation nor any appearance or filing in this proceeding shall be deemed or construed as an admission that any of the Cancelled Entities remain in existence or are capable of being sued in any proceeding.

_____, 2014

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Fax: (214) 855-6808

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS: the above-captioned action is dismissed and discontinued without costs and with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE